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for Washington Mutual Bank

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

FREEDOM MORTGAGE
CORPORATION,

Defendant.

Case No.

**COMPLAINT FOR CONTRACTUAL
INDEMNITY**

COMPLAINT

INTRODUCTION

1. Pursuant to written agreements, defendant Freedom Mortgage Corporation (“Freedom” or “Defendant”) brokered mortgage loans for Washington Mutual Bank and/or its subsidiaries, including Long Beach Mortgage Company (collectively, “WaMu”). As part of their agreement, Freedom promised to indemnify WaMu for any losses arising either directly or indirectly, or in any way as a result of its submission of any inaccurate or incomplete application or other documentation for loans Freedom brokered.

2. After WaMu funded the loans from Freedom, WaMu sold Freedom-brokered loans into residential mortgage-backed securitized trusts (“RMBS Trusts”) for which Deutsche Bank National Trust Company served as trustee (“Trustee”). The Trustee ultimately asserted claims that it suffered losses because of defective loans sold into the RMBS Trusts, including at least twenty-five (25) mortgage loans brokered by Freedom (“Freedom Defective Loans”).

3. Plaintiff Federal Deposit Insurance Corporation as Receiver for WaMu (“FDIC-R” or “Plaintiff”) incurred losses settling the Trustee’s claims. FDIC-R’s losses arose out of Freedom’s provision of inaccurate or incomplete loan applications or other documentation prepared by or at the direction of Freedom including, *inter alia*, Freedom’s submission of loan applications and documentation that misrepresented such things as the borrowers’ credit histories, employment status, income, or occupancy status.

4. FDIC-R demanded that Freedom honor its written contractual indemnification obligation. Because Freedom has not honored its obligations, FDIC-R brings this action as successor to WaMu’s rights, titles, powers, and privileges.

PARTIES, JURISDICTION, AND VENUE

5. The Federal Deposit Insurance Corporation is an instrumentality of the United States and is organized and exists under the laws of the United States. 12

1 U.S.C. §§ 1811, 1821(d). Pursuant to 12 U.S.C. § 1821(d)(2), FDIC-R succeeded to
2 all rights, titles, powers, and privileges of WaMu and of any stockholder, member,
3 account holder, depositor, officer, or director of WaMu with respect to the bank and
4 its assets. FDIC-R brings this action in its capacity as the duly appointed receiver of
5 WaMu, which the Office of Thrift Supervision closed on September 25, 2008,
6 appointing FDIC as Receiver for WaMu that same day.

7 6. Freedom is a New Jersey corporation with its principal place of
8 business in Mount Laurel, New Jersey. Freedom is registered and licensed to do
9 business in California.

10 7. This Court has subject-matter jurisdiction pursuant to 12 U.S.C.
11 § 1819(b)(1) and (2) and 28 U.S.C. §§ 1331 and 1345.

12 8. Freedom contractually agreed to venue in this district. *See* Broker
13 Agreement (“Agreement”), ¶ 21, attached hereto as Exhibit 1. Venue is also proper
14 in this district pursuant to 28 U.S.C. § 1391 because a substantial part of the events
15 or omissions giving rise to this claim occurred in this judicial district because,
16 among other things, the contractual business relationship was entered into by WaMu
17 in this district and the place of performance for all or some of the obligations sued
18 upon was in this district.

19 **FACTUAL ALLEGATIONS**

20 9. WaMu was a federal savings bank that, directly or through affiliates
21 and/or subsidiaries, among other things, purchased, funded, and sold mortgage loans
22 to investment trusts that packaged loans into securities for investors, which are
23 generally known as residential mortgage-backed securities.

24 10. On information and belief, Freedom engaged in the business of
25 brokering, originating, processing, packaging, submitting for funding, selling and/or
26 transferring loans secured by real property.

1 **A. Freedom's Contractual Obligations**

2 11. Freedom and WaMu had a contractual business relationship governed,
3 in relevant part, by the Agreement attached hereto as Exhibit 1.

4 12. Freedom agreed that it would prepare, package, and submit loan
5 applications on behalf of loan applicant borrowers seeking WaMu loans. Freedom
6 was responsible for, among other things, representing loan applicants in locating
7 lenders; interacting directly with and interviewing the borrower, counseling and
8 assisting the borrower in the financing process; choosing the loan product with the
9 borrower; collecting relevant information and documentation in support of the loan
10 application; preparing the loan application and submission package; and submitting
11 the completed loan package to WaMu. Freedom agreed to only submit loan
12 applications that met all applicable requirements established by WaMu.

13 13. Freedom was compensated for any loans funded by WaMu.

14 14. Pursuant to the Agreement, Freedom expressly agreed to indemnify
15 WaMu as follows:

16 [Freedom] will indemnify, defend and hold [WaMu] ... harmless from
17 any and all costs, claims, charges, actions, causes of action, losses or
18 liability arising either directly or indirectly, regardless of any
19 indemnitee's negligence, by reason of [Freedom]'s negligence, a
20 breach of the terms or conditions of this Agreement, or in any way as a
21 result of an inaccurate or incomplete application or other
22 documentation prepared by or at the direction of [Freedom].

22 **B. The Freedom Defective Loans**

23 15. Pursuant to the Agreement, Freedom brokered the 25 Freedom
24 Defective Loans summarized on Exhibit 2 that is incorporated by reference and
25 attached hereto.

26 16. As noted above and set forth in more detail below, the Trustee asserted
27 claims against FDIC-R based on alleged breaches of WaMu's representations and
28 obligations concerning the quality and characteristics of the loans, the borrowers,

1 and the collateral on certain loans sold into the RMBS Trusts, including the
2 Freedom Defective Loans. Accordingly, FDIC-R incurred losses in connection with
3 the Freedom Defective Loans.

4 17. The Freedom Defective Loans contained inaccurate and incomplete
5 loan applications or other documentation because of misrepresentations in the
6 application materials, including but not limited to misrepresentations relating to the
7 quality and characteristics of the loans, the borrowers, and the collateral. As a
8 result, the Freedom Defective Loans failed to meet all applicable requirements and
9 terms and conditions of the Agreements.

10 18. As an example, the loan documents for borrower JS contained
11 numerous deficiencies, inaccuracies, and material misrepresentations. Freedom
12 prepared and submitted loan application documents for JS that overstated his
13 earnings more than tenfold. In addition, the appraisal Freedom submitted utilized
14 improper and superior comparable properties rather than more proximate
15 comparable properties.

16 19. As another example, Freedom prepared and submitted loan application
17 documents for DW that included a living expense payment history that was false
18 and misleading. Specifically, DW's purported rental history verification was
19 signed, not by an independent third party who was DW's landlord, but by his
20 mother, who did not even own the rental property.

21 **C. WaMu's Sale of the Freedom Defective Loans to the RMBS Trusts**

22 20. After WaMu funded the Freedom Defective Loans, WaMu sold each of
23 them to the RMBS Trusts.

24 21. In connection with such sales, and in reliance on the materials,
25 representations, obligations, and remedies Freedom provided to WaMu, WaMu
26 provided representations, obligations, and remedies to the RMBS Trusts regarding
27 the quality and characteristics of the loans, the borrowers, and the collateral. With
28 respect to defective loans, WaMu was liable to the RMBS Trusts, *inter alia*, where

1 there was a material misrepresentation or omission in a loan application or other
2 supporting documentation.

3 **D. The Trustee Action and FDIC-R's Settlement with Trustee**

4 22. After WaMu failed, on December 30, 2008, the Trustee filed a proof of
5 claim with FDIC-R asserting that WaMu breached representations and warranties in
6 connection with the loans sold to various RMBS Trusts. On August 26, 2009,
7 Trustee filed a lawsuit in the District Court for the District of Columbia against
8 FDIC-R for losses resulting from such loans that WaMu sold to the RMBS Trusts,
9 including the Freedom Defective Loans.

10 23. FDIC-R defended itself against the claims in the Trustee's lawsuit and
11 eventually settled with the Trustee.

12 24. Pursuant to a settlement agreement with an effective date no earlier
13 than September 5, 2017, FDIC-R and the Trustee settled claims against FDIC-R,
14 including representation and warranty breach claims arising out of or relating to the
15 Freedom Defective Loans. On September 5, 2017, FDIC-R paid the \$3,006,929,660
16 Receivership Certificate to the Trustee in settlement of Trustee's claims, including
17 claims on the Freedom Defective Loans. Settlement of the Trustee's claims for that
18 court approved amount was objectively reasonable. FDIC-R's indemnification
19 claims are timely because they are brought within six years of the date of accrual.
20 12 U.S.C. § 1821(d)(14).

21 25. FDIC-R was liable for the losses due to breaches of WaMu's
22 representations and obligations concerning the quality and characteristics of the
23 loans, the borrowers, and the collateral on certain loans sold into the RMBS Trusts,
24 which loans included the Freedom Defective Loans. The Trustee asserted that
25 FDIC-R was contractually responsible for breaches of representations and
26 warranties including, *inter alia*: misrepresentations, negligence, or fraud occurred
27 in the origination of the loan; appraisals were inconsistent with underwriting
28 guidelines; defaults existed by, for example, a misrepresentation of income; and

1 loan-to-value ratios exceeded 100 percent. Given Freedom's role and conduct in
 2 connection with the Freedom Defective Loans, including Freedom's relationship to
 3 the borrowers and its preparation, gathering, and submission of loan applications
 4 and documentation, FDIC-R's liability and loss to the Trustee arose out of
 5 Freedom's provision of inaccurate or incomplete loan applications and supporting
 6 documentation prepared by or at the direction of Freedom.

7 **E. Freedom's Breach of the Indemnification Obligations**

8 26. On May 10, 2021, FDIC-R sent a demand letter to Freedom seeking
 9 indemnification for its losses arising out of Freedom's provision of inaccurate or
 10 incomplete loan applications or other documentation in connection with the
 11 Freedom Defective Loans. Freedom has not honored its obligation to indemnify
 12 under the Agreement.

13 27. The Agreement provides that the prevailing party in any action to
 14 enforce it may recover its reasonable attorneys' fees. In order to enforce FDIC-R's
 15 rights under the Agreement, FDIC-R has retained outside counsel and agreed to pay
 16 reasonable attorneys' fees. In addition, FDIC-R has assigned in-house counsel to
 17 assist in actively preparing to bring this case to trial.

18 28. All conditions precedent to the relief sought in this action have been
 19 fulfilled.

20 **CLAIM FOR RELIEF**

21 **(Contractual Indemnification)**

22 29. Plaintiff FDIC-R incorporates by reference the allegations set forth
 23 above as though set forth fully herein.

24 30. The Agreement is a valid and enforceable contract.

25 31. Plaintiff substantially performed all its obligations under the
 26 Agreement.

27 32. FDIC-R is entitled to indemnification from Freedom for losses and
 28 liabilities that FDIC-R suffered settling the Trustee's claims, arising out of

1 Freedom's provision of inaccurate or incomplete applications or other
2 documentation prepared by or at the direction of Freedom, in connection with the
3 Freedom Defective Loans.

4 33. Freedom breached its obligations to indemnify FDIC-R, resulting in
5 damage to FDIC-R in an amount to be proven at trial.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff FDIC-R respectfully requests that it be granted:

- 8 A. A judgment against Freedom in an amount to be proven at trial for its
9 breach of its indemnification obligations;
10 B. Pre-judgment interest under 12 U.S.C. § 1821(l) or applicable state law;
11 C. Reasonable attorneys' fees;
12 D. Costs and expenses; and
13 E. Any other relief as the Court deems just and proper.
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1 DATED: July 28, 2023 MARK MIGDAL & HAYDEN

2
3 By: /s/ Paul A. Levin

4 Paul A. Levin

5 Attorneys for Plaintiff Federal Deposit Insurance

6 Corporation as Receiver for Washington Mutual Bank

7 DATED: July 28, 2023 MORTGAGE RECOVERY LAW GROUP, LLP

8
9 By: /s/ Michael H. Delbick

10 Michael H. Delbick

11 Attorneys for Plaintiff Federal Deposit Insurance

12 Corporation as Receiver for Washington Mutual Bank

13 DATED: July 28, 2023 FEDERAL DEPOSIT INSURANCE CORPORATION

14
15 By: /s/ Douglas T. Hoffman

16 Douglas T. Hoffman (to seek admission to pro hac vice)

17 Attorneys for Plaintiff Federal Deposit Insurance

18 Corporation as Receiver for Washington Mutual Bank